INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.O.C.P. No. 1270 of 2005
Date of decision November 28, 2007

Jaswinder Kaur w/o Harwinder Singh, r/o village Pundher, Tehsil Dasuya, Distt. Hoshiarpur, at present living with her father Gian Singh s/o Sher Singh, r/o village Dadial Kuran,Tehsil Dasuya.

..... Petitioner

Versus

Harvinder Singh Depoy No. 3390890 L. s/o Sh. Darshan Singh s/o Puran Singh, r/o Village Pundher, Tehsil Dasuya, Distt. Hoshiarpur, at present C/O 21, Sikh Regiment B. Cop. c/o 56-APO.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. K. S. Dadwal, Advocate
for the appellant.

Mr. Arun Jain, Advocate
for the respondent.

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Sham Sunder, J.

This petition under Section 12 of the Contempt of Courts Act, 1971, for initiation of contempt of court proceedings, was filed by the appellant-petitioner, against the respondent, on the averments, HMA No.85 of 1997 was filed by the respondent, seeking dissolution of marriage. The said petition was accepted on 6.9.1999, and the decree of divorce was granted by the District Judge, Hoshiarpur.

2. Aggrieved against the judgment and decree, FAO No.158-M of 1999 was filed on 13.11.1999 and notice thereof, was ordered to be issued

to the respondent. It was further stated that during the pendency of the appeal, on 20.3.2000, the respondent contracted second marriage. It was further stated that the said second marriage was contracted by the respondent against the provisions of law. Accordingly, a prayer was made that the respondent had committed contempt of Court and he be punished.

3. On notice of the petition, the respondent filed reply and admitted that he contracted the second marriage on 20.3.2000. He further stated that he had not received any notice, nor he knew about the pendency of the appeal, against the judgment and decree of the trial Court. It was further stated that since no order restraining him, had been passed by the this Court, the question of violation thereof, did not at all arise, and as such, the respondent did not commit contempt of Court.

4. I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

5. Learned Counsel for the appellant-applicant, at the outset, contended that since the marriage was contracted by the respondent, during the pendency of the appeal, he violated the provisions of law and as such, was liable to be punished for contempt of Court.

6. On the other hand, the Counsel for the respondent, contended that the respondent was not served with any notice, nor he had any knowledge, about the pendency of the appeal, nor any order was passed by this Court, restraining him, from contracting second marriage, by the time , he contracted the same and, as such, he did not commit contempt of Court.

7. No doubt, the appeal was filed by the appellant-wife, within the statutory period of limitation, yet notice in the same was not served upon the respondent, until he contracted second marriage on 20.3.2000.

Even, the second marriage was contracted by the respondent, long after the expiry of the period of limitation of filing the appeal. No order restraining the respondent from contracting second marriage, was passed by this Court, by the time he contracted second marriage on 20.3.2000. Had such an order been passed and he had in violation thereof contracted second marriage, it would have been said that he committed contempt of Court. In the absence of any order, having been passed, by this Court, restraining the respondent, from contracting second marriage, until he actually contracted the same, he could not be held guilty for contempt of Court. No doubt, reliance was placed by the learned Counsel for the appellant on **Savitri Pandey Vs. Prem Chandra Pandey,** 2002 (1) RCR (Civil)719 (S.C.) to contend that remarriage,, during the pendency of the appeal, could not be contracted, by the respondent, even if no stay had been granted and, as such, the respondent committed contempt of Court. In the said authority, no doubt, principle of law laid down was to the effect, that no person could be allowed to take benefit of his own wrong, and even if no stay had been granted in the appeal, against the decree of divorce, no spouse could remarry during the pendency of the appeal. However, it was not laid down, in this authority, by the Apex Court, that, in case, the respondent contracted second marriage, during the pendency of the appeal, without even an order having been passed restraining him to do so, he would be guilty of Contempt of Court. In the instant case, the respondent also did not take benefit of his own wrong. In these circumstances, no help can be drawn, by the learned Counsel for the appellant from this authority. The application, therefore, deserves to be dismissed.

8. For the reasons recorded hereinbefore, the application, being without merit, must fail and the same stands dismissed.

(SHAM SUNDER)
JUDGE

November 28, 2007
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